

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-1085

To be argued by
HAROLD O. N. FRANKEL

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-against-

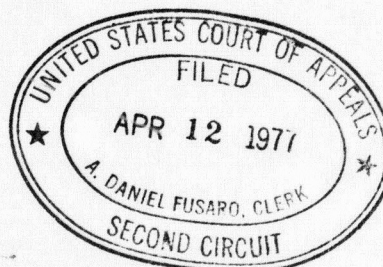
WILLIAM HIGHTOWER,

Defendant-Appellant.

On Appeal from the United States District Court for the
Southern District of New York.

BRIEF AND APPENDIX FOR APPELLANT

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Questions Presented

1. Did the Court below err in not dismissing the indictment by reason of the fact that the proof showed a multiple conspiracy and only a single conspiracy was charged in the indictment and because of the inherently unfair nature of the mass conspiracy trial?
2. Did the Court below err in not granting the appellant, Hightower, a hearing on his pro se motion regarding a letter from the forelady of the jury before he was sentenced?
3. Did the Court below err in not granting counsel CJA funds for a psychiatric evaluation of the Government's main witness, JACK BROWN?

STATEMENT PURSUANT TO RULE 28 (3)

PRELIMINARY STATEMENT

Appellant, William Hightower, appeals from a judgment of the United States District Court, Southern District of New York (Owen, J.) convicting him of conspiracy to distribute and sell narcotics in violation of various section of Title 21 USC.

Appellant was found guilty of 4 Counts (1,16, 17 and 19) and sentenced to 12 years on each Count each to be followed by a three-year special probation, the counts to run concurrently.

FACTS

The matter before the Court in the instant appeal involves a mass narcotics conspiracy trial. It is a conspiracy with vast numbers of people covering activities over an eight year period in numerous states. The trial lasted for three months, the transcript ran to almost 10,000 pages and hundreds of exhibits were marked into evidence. There was testimony about alleged narcotics dealings ranging from Upstate New York to Miami, Florida, including Chicago, Illinois.

The principal witnesses against Appellant, Hightower, was Jack Brown, Michael Parker and Estelle Tompkins. Both Brown and Parker were being paid by the United States Government pursuant to the Witness Protection Program. Miss

Tompkins was a former drug addict now in a methadone maintenance program. There was no testimony which involved the Appellant, Hightower, in any drug dealings in any other place other than Washington, D.C. and New York City. It is Appellant's position that the instant case involved multiple conspiracies rather than a single conspiracy as charged in the indictment and that to bring the defendants to trial under the indictment filed herein and under the circumstances of this massive trial was highly prejudicial to appellant. The appellant was forced to sit through weeks of trial and listen to testimony which included numerous murders of drug dealers and other far ranging narcotics violations which were clearly unrelated to the crimes the appellant stood accused of.

It is appellant's position that whether this Court views this case as a single or multiple conspiracy goes against the often repeated warnings of this Court that this type of trial is fundamentally unfair and that the Government must cease in its use of this type of prosecutorial format.

POINT I

THE APPELLANT, HIGHTOWER, WAS
DEPRIVED OF A FAIR TRIAL BECAUSE
THE INDICTMENT ALLEGED A SINGLE
CONSPIRACY AND THE PROOF SHOWED
MULTIPLE CONSPIRACIES AND FURTHER
THE MASS CONSPIRACY TRIAL WAS
FUNDAMENTALLY UNFAIR.

The cases of United States v. Sperling, 506 F.2d 1323 (2d Cir. 1974), United States v. Miley, 513 F.2d 1191 (2d Cir. 1974) and United States v. Bertolotti, 529 F.2d 149 (2d Cir. 1975) are all in point on the issue herein.

In Sperling, although the Court stated that there was enough connections between two groups of drug dealers to justify a single trial, this Court set forth its views on a mass conspiracy trial such as the Government conducted in this case. Thus the Court stated at page 1340 as follows:

"In view of the frequency with which the single conspiracy vs. multiple conspiracies claim is being raised on appeals before this court, . . . we take this occasion to caution the government with respect to future prosecutions that it may be unnecessarily exposing itself to reversal by continuing the indictment format reflected in this case. While it is obviously impractical and inefficient for the government to try conspiracy cases one defendant at a time, it has become all too common for the government to bring indictments against a dozen or more

defendants and endeavor to force as many of them as possible to trial in the same proceeding on the claim of a single conspiracy when the criminal acts could be more reasonably regarded as two or more conspiracies, perhaps with a link at the top. Little time was saved by the government's having prosecuted the offenses here involved in one rather than two conspiracy trials. On the contrary, many serious problems were created at the trial level, including the inevitable debate about the single conspiracy charge, which can prove seriously detrimental to the government itself. We have already alluded to our problems at the appellate level, where we had to comb through a voluminous record to give adequate consideration to the claims of eleven separate appellants." (Emphasis supplied).

* * * *

United States v. Miley, 513 F.2d 1191 (2d Cir. 1974) repeated Sperling's warning that the mass conspiracy format was "ill-advised", and invited reversals. (United States v. Miley, supra, at p.1195, 1207 n.10, 1210). There, the convictions were not overturned only because the trial was short, the defendants were few, and there was no testimony as to any particular defendant which differed substantially from that of any others. (513 F.2d at 1209).

In United States v. Bertolotti, (supra), there was no need to repeat the warnings, but simply to apply them. The Court reversed the convictions. It found that the "single conspiracy" was, despite a common group. really several conspiracies, as shown by a Special Agent's memoran-

dum referring to "Conspiracy No. 1" and "Conspiracy No. 2." Each of the appellants had been "subjected . . . to voluminous testimony related to unconnected crimes in which he took no part" (529 F.2d at 157). Additional prejudice arose from the "obviously shocking and inflammatory discussions about assault, kidnapping, guns and narcotics" found in the Mengrone wiretaps, which, although probative of one conspiracy, had no relevance to the other transactions proved at trial (529 F.2d at 158).

It is submitted that taken together, Sperling, Miley and Bertolotti, require reversal of the conviction of appellant, Hightower.

POINT II

THE COURT SHOULD HAVE GRANTED
THE APPELLANT, HIGHTOWER, A
HEARING ON HIS PRO SE MOTIONS
RELATING TO A LETTER WRITTEN
BY THE FORELADY OF THE JURY
BEFORE SENTENCING APPELLANT

At the Sentence hearing counsel for appellant Hightower, read into the record (T.9573-9575)* (A1)** a letter from the appellant which the Court was asked to consider as a motion for a new trial and also as a motion to set aside the verdict. As can be seen in essence, the motion was based on the two letters written by Ms. Isabelle Blau, the forewoman of the jury; wherein she stated that the verdict was a "miscarriage of justice" and that "it was virtually impossible to arrive at a fair and just verdict for these 22 people bound and tried together . . . " A copy of Ms. Blau's letter dated November 27, 1976 is reproduced in the Appendix (A4) as well as the response of Judge Owen, dated December 8, 1976 (A7), Ms. Blau's second letter of December 18, 1976 (A9) and Judge Owen's response of December 23rd, 1976 (A11). The Court denied the motion from the bench. Certainly under all the circumstances herein at the very minimum a hearing should have been held as requested by appellant, Hightower, before he was sentenced.

* References are to trial transcript.

** References are to Appendix.

POINT III

IT WAS ERROR FOR THE TRIAL
COURT TO REFUSE TO ALLOW A
PSYCHIATRIC EVALUATION OF THE
GOVERNMENT'S CHIEF WITNESS,
JACK BROWN

At pages 4050-4054 (A 12) counsel for a co-appellant requested the Court to permit a psychiatric evaluation of Jack Brown, the Government's chief witness in order to prove that the witness had a paranoid delusionary motive to lie on the stand. CJA funds were sought for this purpose. However, the court denied the motion. It should also be noted that appellant, Hightower, in his motion at sentencing (A 1) stated that he was denied a fair trial because he was "denied my right [to] question the competency of the witness to testify (Jack Brown)".

When one considers the bizaare and fantastic testimony of Jack Brown, i.e. the testimony concerning the execution of informers by means of laser beams and in ovens the denial of the application for a psychiatric evaluation of Jack Brown was reversable error.

POINT IV

PURSUANT TO RULE 28 (i) OF
THE FEDERAL RULES OF APPELLATE
PROCEDURE, APPELLANT, HIGHTOWER,
ADOPTS ALL RELEVANT POINTS
RAISED BY CO-APPELLANTS

CONCLUSION

FOR THE ABOVE REASONS APPELLANT, HIGHTOWER'S
CONVICTION SHOULD BE REVERSED.

Respectfully submitted,

HAROLD O.N. FRANKEL
Attorney for Defendant-Appellant,
William Hightower

MP 51

EXCERPTS FROM SENTENCING MINUTES

THE COURT: In the presence of the marshal, he may.

(Recess.)

THE COURT: Now, Mr. Hightower, are you ready for sentence?

MR. FRANKEL: Well, I want to read a letter that he has asked me to read to the Court before your Honor imposes sentence.

MR. BELLER: May I say something? I did file a second felony information with regard to Mr. Hightower. It was based upon a prior arrest, and my research has disclosed that it was not a conviction, so I will withdraw that.

MR. FRANKEL: I have been given a photostatic copy of the papers on that case, which indicate that it was dismissed.

Before we proceed with sentence, your Honor, the defendant has given me a letter to read to the Court. He calls it an oral motion for a new trial. I might add to that in my own behalf that it is also a motion to set aside the verdict. It reads:

"Your Honor, I respectfully move the Court for a new trial, in that I was denied a fair trial and due process. The motion is based on two letters written by the forewoman of the jury that returned the verdict

1
2 of guilty, wherein she alleges that the verdict was
3 the result of ignorance, passion, compelled to go with
4 the others, a miscarriage of justice and other irregular-
5 ities.

6 "I therefore urge the honorable Court to defer
7 imposition of sentence pending determination of written
8 motions and a reasonable time to do so and an order from
9 the Court permitting depositions of the jury forewoman,
10 Miss Isobel Blau.

11 "I further move the Court to set aside my convic-
12 tion and order a new trial, in that I was effectively
13 denied my Sixth Amendment and Fifth Amendment rights
14 as follows:

15 "(a) Denied my right question the competency of the
16 witnesses to testify (Jack Brown)".

17 On the side is written the word "insanity". Under
18 that is written "witnesses."

19 "(b) An unverified telephone call referring to
20 Orangeberg to New York phone call.

21 "(c) False testimony of Estelle Tompkins and Jack
22 Brown relative to 1968 and the U. S. Attorney's use of
23 this perjurious testimony to inflame and prejudice the
24 jury in his summation."

25 I am going to give a copy of this to the clerk of

A2

1 MP 53
2 the court, your Honor, for filing with the papers, if I may
3 do that.

4 THE COURT: That motion is denied.

5 MR. FRANKEL: Thank you.

6 THE COURT: Mark it as Court's Exhibit 3. The
7 motion is denied for the reasons expressed in connection with
8 the motion of Mr. Martin, based on the same ground.

9 MR. FRANKEL: Yes, your Honor.

10 Will you consider that I am joining in Mr. Martin's
11 motion?

12 THE COURT: I understand Mr. Rodriguez made a
13 similar motion, and that is denied on the same grounds.

14 MR. FRANKEL: I am thankful to Mr. Beller for
15 indicating that this defendant was not previously convicted
16 of any other narcotics crime.

17 MR. BELLER: Well, I am not familiar -- excuse me.
18 I am limiting it to this record. There is no felony
19 or narcotics conviction to justify the filing of a second
20 offender information.

21 MR. FRANKEL: You are referring to a 1950 matter.
22 Now, as to his record, there is no previous conviction on the
23 record as far as I have seen in both the probation report
24 and the rap sheet.

25 I would like to call the Court's attention to the

LETTER FROM ISABELLE BLAU TO HON. IRVING KAUFMAN DATED
NOVEMBER 27, 1976 372 Central Park West
New York City, N.Y. 10025

November 27, 1976

Hon. Irving Kaufman
Chief Judge United States Court of Appeals
Foley Square, N.Y., N.Y. 10007

Dear Judge Kaufman:

I served as forewoman of the jury for the trial which began August 10 and ended November 12, 1976 charging 22 defendants with involvement in a federal narcotic conspiracy, in the court of Judge Owen.

I entered into the role of juror with innocence, curiosity and concern regarding our judicial system.

I was forced as a juror under the prevailing law to arrive at a verdict of guilty or not guilty based on the evidence presented which effected the lives of 22 human beings. I feel it was virtually impossible to arrive at a fair and just verdict for those 22 people, bound and tried together for three months under the existing rules, conditions and laws which I was obliged to abide by.

I demanded of myself and the others of the jury an open mind with total freedom of expression to the very last moment. Until the end, I hoped to find flares of truths from my fellow jurors to confirm and determine my judgement.

I expressed to them, the injustice of rushed conclusions and conveyed my dilemma in regard to the remembrance of such an abundance of facts, data, witnesses and evidence, as well as my inability to cope with the enormity of the task of gathering sufficient and adequate details of information.

I experienced mental incarceration and felt dehumanized, stifled, deprived, confined, restricted and frustrated during the three months of the trial. Under these conditions, could I have pursued my search for truth and justice to the fullest extent? I am deeply disturbed, pained and anguished.

I abhor and object to the procedure that presented to me, a juror, bits, pieces and fragments of the evidence presumed to be true, while being denied the whole truth concerning this evidence, which was withheld and known by other members of the court. I resented the side bars.

The overlapping of information, superimposing, crisscrossing of layers of facts juxtaposed in normal and legal language, led to confusion. During the deliberation, after requests to hear portions of the transcript read, upon our return to the jury room memories occasionally differed. I would have wanted the transcript in the jury^{ROOM} to refer to constantly over and over, if need be.

The demeanor of the witnesses and impressions, I took notice of, often were wasted away by the magnitude of the trial. No asking of questions were allowed during the trial. When I was most apt to have a thought of inquiry, it was at times lost into oblivion and forgotten from my mind thereafter.

When^I asked if we could take notes, I was told no. I accepted this as law. When^I asked if during the verdict the jury or myself as forewoman could have the privilege of some expression, I was also told no.

How can I, as a juror, pass judgement without having the opportunity to confer with all others involved in the case who presumably are seeking the truth.

Is the jury considered so incapable, so incompetent of judgement if presented with all or more of the known truths and facts

rather than prepared and selected portions of the supposed truths and facts, that they cannot arrive at an objective conclusion? Are the defense lawyers and prosecutors above the jury in judgement on the one hand and yet the jury's word is ultimate? We are not permitted to judge the whole and yet we are asked to pass judgement as to the guilt or innocence of the defendants dealing with this whole while given only particles of the evidence. At the same time, we carry with us the burden of deciphering these parts which may or may not be the whole truth. The possible birth and flowering of complete justice is hereby denied.

I respect my common sense fervently and was asked to use it in passing judgement. How could I, ^{when I} personally needed the time to digest and assimilate ^{even} the limited facts presented to me?

I did not know my legal rights. Knowing, I had to pass judgement on the 22 defendants being tried simultaneously, did I have the legal right to object? I never knew clearly what my rights as a juror were and felt if I went beyond the range of what I was informed of as my rights, I might be charged with transgressing my authority as juror.

As a juror, I feel guilty, because I did not know how to object and speak my mind in the court room as I did in the jury room

I, urge, as a citizen and juror, that steps be taken to rectify this miscarriage of justice.

Respectfully yours,

Isabelle Blau

Isabelle Blau

LETTER FROM HON. IRVING KAUFMAN TO ISABELLE BLAU DATED
DECEMBER 18, 1976

December 8, 1976

Miss Isabelle Blau
372 Central Park West
New York, New York 10025

Dear Miss Blau:

Chief Judge Kaufman has sent me your letter of November 27, and I am distressed to learn of your feelings. I gather that the essence of your dissatisfaction is that the rules of evidence kept facts from you that you feel you should have had before you for consideration, and that you would have liked more time for deliberation.

I am sure you will agree that it is essential in every case that all the parties receive a "fair trial" on the issues presented. Thus, you, the jury, should have before you only relevant and probative facts to consider. One of my responsibilities as a trial judge is to screen proposed evidence and exclude such matters as, in my judgment, would not assist you in arriving at your verdict but could only serve to prejudice you in your consideration of the case. In this regard, you mention resenting the side bar conferences. Those were generally to determine whether or not a risk of prejudicial or inadmissible hearsay evidence was in the offing. Now that the trial is over, I am free to observe to you that side bar conferences frequently involved separating appropriate evidence bearing on the charges from evidence that might suggest a defendant's prior conviction for narcotics violations or involvement in other criminal activity. Such evidence could have strongly, adversely, and improperly influenced a juror's assessment of a defendant's conduct on these narcotics charges. Each defendant on this trial was entitled to be judged on the facts involved in this charge alone, uninfluenced by such things as a prior criminal record.

As an example, you may recall testimony as to a certain defendant being "away from New York" for a certain period of time. This phraseology was worked out between counsel and the Court to enable a defendant to explain an absence at a particular time without revealing to you that, in fact, that defendant was in prison at that time.

Miss Isabelle Blau:

December 8, 1976

In sum, the rules of evidence in criminal cases are designed not only to permit to the fullest extent possible relevant evidence to be adduced for consideration by the jury, but they are also designed to exclude from the jury's consideration matters which are unduly prejudicial and of slight, if any, relevance.

As to your concern that you did not have sufficient time over the six days of deliberation to perform your service as a juror in a manner which satisfied you, I am sorry that you have that feeling. I was not aware nor made aware at the time of such concern on any juror's part in this case. Indeed, I and lawyers in the courtroom were highly gratified at the careful concern that the jury gave to the testimony and exhibits and the specificity with which you requested the reading of testimony as you considered the various charges of the indictment. While the evidence was extensive in terms of the time taken to receive it, it was relatively limited in subject matter and had been, I thought, excellently reviewed for you by eight days of attorneys' summations and by you in your six days of deliberations. Also, I trust, the Court's marshaling was of some assistance.

From my vantage point, I believe you can feel complete satisfaction in the carefulness of the performance of your duties by you and your colleagues. This is evident from the clear distinctions you made as to certain defendants and certain charges and the fact that after obviously lengthy and careful consideration of the issues, various of your number conscientiously maintained differing views as to one defendant on all charges and another defendant on certain counts, while finding the latter defendant guilty on other counts. All of this I regard as being in the highest traditions of jury service.

I trust that these remarks in some measure are a fair answer to your sincere and troubled letter.

Yours very truly,

LETTER FROM ISABELLE BLAU TO HON. RICHARD OWEN DATED DECEMBER 18, 1976

372 Central Park West
New York City, N.Y. 10025

DECEMBER 18
~~January 7~~, 1976

Judge Richard Owen
United States District Court
Foley Square, N.Y.C. 10007

Dear Judge Owen:

I wish to express my profound concern and disappointment regarding your considerate answer to my letter dated Nov. 27, concerning the trial I served as juror, charging 22 defendants with a federal narcotic conspiracy. Your letter has caused me great disturbance.

The way the judicial system appears to me now, is that not only is it impossible to achieve justice under the existing court rules for the jury but that justice may have failed to have been achieved in the past, and even worse, if steps are not taken immediately, at this very moment, a miscarriage of justice may be taking place anywhere under our system, which was founded on the concept of liberty and justice for all.

To make this more specific, I have listed a number of non-functional discrepancies in the jury system as I experienced it as forewoman of a jury.

The transcript was available to others of the court for their own purposes. We, the jury, also needed to read and evaluate the transcript for ourselves yet were refused access to it at any time. It was the jury's obligation to pass judgement on the defendants, based on the evidence contained in the transcript. This was the law.

The fact that I could not take down notes during the trial, added to the fact that the transcript could not be brought into the jury room, prevented an easy referral on my part especially, during the deliberation of facts that could not be specifically remembered amidst the crossfire and disagreements of jurors' opinions. Points contained in the transcript would have clarified the issues for me and enabled me to refute or confirm the more definite recall of other jurors. Instead of this, I was....forced to base my conclusions, as I was advised to, on my best recollections, which in my opinion were not adequate under the prevailing conditions. Ultimately, I was compelled to go along with the opinions of the other jurors.

The issue here is one of court procedure which in my estimation made it impossible for me to arrive at my own just verdict under the existing conditions especially, but not only because of, but also due to a multitude of 22 defendants being tried together.

For this reason, when any of the defendants appeal their conviction through the court, in my estimation, they should have that right in the light of what I have herein stated concerning the jury procedure. Since, I, a juror, was prevented from issuing a just and unbiased verdict following my own conscience, that right to appeal is self-evident.

I am awaiting an immediate reply to this letter because what is at stake here is more important than myself or the procedure of the court. The American system of justice is herewith on trial.

A10

Respectfully yours,

Isabelle Blau
Isabelle Blau

LETTER FROM HON. RICHARD OWEN TO ISABELLE BLAU DATED
DECEMBER 23, 1976

December 23, 1976

Miss Isabelle Blau
372 Central Park West
New York, N. Y. 10025

Dear Miss Blau:

Judge Owen has received and considered your letter to him of December 13, 1976. Believing that his earlier response met the essence of your views expressed in this and your first letter, he has asked me to advise you that, in his opinion, further correspondence would not be fruitful.

Very truly yours,

Stephen Markstein

Law Clerk to Judge Owen

EXCERPTS FROM TRIAL TRANSCRIPT

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non-CJA counsel for any purpose,
during or after trial, and not
to be reproduced.

4050

1
2 UNITED STATES OF AMERICA
3 vs.
4 JUAN ANTONIO ALVAREZ, et al.

September 17, 1976,
9:45 A.M.

6 --

7 (In the robing room: Present Mr. Sear, Ms.
8 Cushman, Mr. Cohn.)

9 THE COURT: I have reviewed the letter of Harvey
10 Roy Greenberg, M.D. I decline to authorize the exploration
11 that you suggested in that I do not see this letter as the
12 basis of any profitable exploration that he would develop
13 that Mr. John Brown could be proven to have a paranoid
14 delusionary motive to lie on the stand, which is what you
15 are saying.

16 MR. COHN: Yes, that's what I was saying.

17 THE COURT: As I read this letter it's a very
18 guarded letter of a kind that --

19 MR. COHN: He had very little material to work
20 from. I think it's responsible in that respect.

21 THE COURT: And he says that the letter suggests
22 paranoid and delusional trends in its author.

23 MR. COHN: And cites him.

24 THE COURT: I will recognize that it is certainly
25 arguable that in the days immediately preceding April 1975

1 dwh

2 Jack Brown was in rough shape, no question that that's
3 certainly arguable on this. Whether that affects his
4 memory today doesn't seem to me that this kind of a study--

5 MR. COHN: That's not the argument at all.

6 THE COURT: Particularly it's arguable the other
7 way that while he may have overstated how people might be
8 going about to get him, although he suggested on the stand
9 that in a couple of answers that he had been told that by
10 somebody in this room, nobody chose to ask him who in this
11 room had told him that or what had been said.

12 MR. COHN: Some lawyer would have struck us
13 had we had.

14 THE COURT: Nevertheless someone gets the
15 feeling that, "Jack, we've going to get you and this is
16 how we're going to get you," and I'm not unaware of that.

17 I'm also aware of Mr. Boggs telling him that
18 he, Boggs, was aware of a \$75,000 contract which gives some
19 verisimilitude to the position he had taken.

20 In any event I just don't, I don't see this letter
21 as the basis.

22 MR. COHN: I disagree with your Honor's ruling.
23 I must say though, your Honor, you have to consider one
24 thing, that if I wasn't appointed counsel I wouldn't have
25 to ask your permission and you should take that into

1 dwh
2 consideration.

3 THE COURT: I understand.

4 MR. COHN: And in fact, the only reason I ask
5 your permission is because a doctor won't do this on
6 speculation. He wants to be assured payment.

7 THE COURT: Also, I note that Mr. Greenberg makes
8 much of a misspelling.

9 MR. COHN: He doesn't make much of it. He puts
10 it in as something which is intriguing. He says it is
11 highly speculative indeed in his words, and all he wishes
12 to do, and all he says in that letter is he thinks it's
13 worthy of further investigation as to his state of mind
14 and that is what I'm seeking to explore as a defense lawyer.
15 It might very well be that he would spend a lot of time
16 and come up with nothing, which even I thought was usable,
17 but I think that's the obligation of defense counsel to
18 pursue these things.

19 THE COURT: So I sort of having the feeling from
20 that last paragraph that Mr. Greenberg is taking possibly
21 questionable Freudian analyses and stretching them beyond
22 all recognition.

23 MR. COHN: I'm sure you're not placing your
24 expertise above his, your Honor.

25 THE COURT: I am not, but I have read about Freud

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and how he is regarded today in some quarters. In any event
enough said.

MR. COHN: Very good.

MS. CUSHMAN: May we have it marked as a Court's
exhibit?

MR. COHN: Yes, I think we ought to.

A15

T2 am

1

hps

2

(In open court; jury not present.)

3

MR. COHN: This is to be marked as a Court's

4

exhibit.

5

THE COURT: This is the letter from Dr.

6

Greenberg.

7

(Court's Exhibit 6 received.)

xx

8

THE COURT: Gentlemen, the reporters have

9

checked their notes and rather than give you a new page,

10

we are just going to note on the record that at page 3403,

11

an answer that read four or five minutes should, in fact,

12

read forty-five minutes.

13

MR. BELLER: Your Honor, I have some inform-

14

ation about computer printout, Exhibit 124, if now would

15

be a good time.

16

MR. KEEGAN: We can't hear you.

17

MR. BELLER: If this is a good time, I am

18

prepared to make a statement about the computer printout.

19

THE COURT: Yes, that is whether the computer

20

cumulatively added things.

21

MR. BELLER: I have spoken to Don Engel, the

22

Chief of the Investigative Record Section in Washington,

23

D.C. for the Drug Enforcement Administration. He has

24

been doing that for five years. He explained to me

25

that the entry in the remark section that reads 0974,

COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

- against -

WILLIAM HIGHTOWER,
Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, Victor Ortega, being duly sworn, depose and say that deponent is not a party to the action,
is over 18 years of age and resides at 1715 Lacombe Avenue; Bronx, New York

That on the 12th day of April, 19 77 at One St. Andrews Plaza
New York, N.Y.

deponent served the annexed

Brief & Appendix

Robert Fiske
U.S. Attorney

upon

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 12th
day of April, 19 77

Robert T. Brin

Victor Ortega
Victor Ortega

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977